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Communications

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July 7, 1997

Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D. C. 20554

Re: Reply comments With Respect to Public Notice - WT Docket 97-82

To Whom It May Concern:

Please find, attached with this letter, a copy of OnQue Communications, Incorporated ("OnQue") reply comments concerning proposals for restructuring C and F block PCS license debt, as requested by the Wireless Telecommunications Bureau ("Bureau") in Public Notice - WT 97-82.

Sincerely,



Charles C. Curtis
President, OnQue Communications, Inc.

CCC/ccc
Attachments

cc: Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Attention: Sande Taxali

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Before The Federal Communications Commission

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Comments on Broadband)	
PCS C and F Block installment)	WT Docket 97-82
Payment Issues)	DA 97-679

July 2, 1997

OnQue Communications
REPLY COMMENTS

OnQue Communications, Incorporated ("OnQue") files these reply comments in response to the comments submitted by parties to the Federal Communications Commission ("Commission") June 23, 1997 addressing the C and F block broadband PCS financing terms.

OnQue's original comments dated June 17, 1997 addressed restructuring existing Commission rules to reflect:

1. Elimination of License Debt
2. Ease Minimum Equity Requirement Rules
3. Eliminate Auctions for Qualifying Small Businesses
4. Encourage Federal Lending Programs for C and F Block Licensees Via RUS and/or Small Business Administration

Subsequent to the filing, the Wireless Telecommunications Bureau ("Bureau") held a public forum June 30, 1997. The forum consisted of two panels: one from licensees and a second consisting of representatives from the financial community. The first panel dealt with the pros and cons of C block restructure from the licensee perspective while the second panel gave the financial community's viewpoint with regards to restructure. While two members of the first panel, Cook Inlet and AirGate, opposed restructure, the financial community unanimously proposed restructure and within a very short time period. These reply comments will address, first, the arguments against restructure and then define OnQue's proposal for restructure to the Commission.

It is OnQue's position that restructuring of license debt, along with changes in equity structure, voting privileges, first lien and forfeiture penalties be accomplished within a thirty day time frame. In addition to such changes, the Commission should refund the March 31 interest payments made by several C block licensees and, depending upon the final restructuring plan, adjust the December 31 interest payments accordingly, for all C block licensees.

Cook Inlet Position Against Restructure

Cook Inlet's ("Cook") position, as well as a few other C block licensees, is clear with regards to restructure. Cook has requested the Commission lift the stay on the installment plan and forgo any proposals to re-address the Commission's finance policy. Cook's request is based on the argument that many C block bidders did not exercise good judgement with bidding and paid too much for the licenses.

Subsequently, these bidders discovered from the financial community that the price paid was excessive and was denied funding. Cook further added that these C block bidders should have known the risks before entering the auction and cannot expect the Commission to come to their rescue and likened the situation to that of the General Motors government bail-out of the late 1970's.

Cook's fundamental argument of differentiating itself and the few C block licensees that are being built from the others due to excessive bid prices does not compare to actual bid price results. The C block auction and re-auction resulted in winning net bids totaling \$10,976,316,335 at \$41.25 per pop. The A and B block winning bids totaled \$2,853,137,720 and \$4,082,677,239, respectively, which interprets to an average price of \$13.03 per pop. In Cook's markets, the net bid price was more than two times the average A and B block winning bids:

MARKET	A/B price per pop	Cook/per pop	C% of A/B
Tulsa, OK	\$14.56	\$38.10	262%
Muskogee, OK	\$14.56	\$39.83	274%
Bartlesville, OK	\$14.56	\$ 4.46	31%
Coffeyville, KS	\$14.56	\$ 6.86	47%
Sherman-Denison, TX	\$ 7.05	\$39.47	560%
Wichita-Falls, TX	\$ 7.05	\$20.50	291%
Spokane, WA	\$ 3.19	\$19.23	603%
Walla-Walla, WA	\$ 3.19	\$ 8.64	271%
Yakima, WA	\$27.63	\$16.51	60%
Wenatchee, WA	\$27.63	\$ 5.34	19%
Port Angeles, WA	\$27.63	\$ 7.79	28%
Aberdeen, WA	\$27.63	\$ 5.68	21%
Worthington, MN	\$ 6.37	\$ 3.52	55%
TOTAL	\$10.41	\$23.65	227%

The Cook markets were over two-times that of the average A and B block bidders while being 57% of the total C block price per pop. That being the case, approximately one-half of the total C block bidders received licenses for bid prices below Cook yet no C block bidder has received funding from the traditional equity markets. The handful of C block licensees that have launched, including Cook, are allied with RBOC's and A/B block PCS licensees. The RBOC's and A/B block PCS licensees have allied with these C block licensees to increase their wireless footprint and absorb the C block prices into

their own extremely large capital structure. In return for the alliance, the RBOC or A/B block licensee utilizes its brand name, network, business office, pricing strategies, interconnection and roaming agreements leaving no distinction between the large company and the C block licensee. If you plot Cook Inlet's markets on a map of the United States, you will immediately notice that every C block market is adjacent or surrounding Western Wireless MTA markets. Once more, in Cook's Tulsa market, only Western Wireless - Voice Stream is operational and Cook Inlet is an unknown entity. The scenario of a C block bidder being funded by traditional debt and equity markets without this type of alliance has yet to happen. As a result, the avenues to funding and subsequent operation of the licenses are extremely restricted to only *de facto* - *de jure* control resulting in subscribers having a reduced choice in wireless carriers, despite Commission objectives.

By disallowing restructure, C block licensees will default, licenses will be re-auctioned at a large discount and Cook could bid for these licenses, further increasing Western Wireless' footprint within the United States. On the other hand, if restructure happens, Cook's license debt could be reduced thereby increasing potential cash flows yet they are not attracted to this prospect. For example, if the Commission decides to eliminate the debt, Cook reduces its long term liabilities by \$67,662,764 and if the Commission decides to reduce the debt to equal the average A/B licenses, suggested by GWI, Cook's long term debt balance reduces by \$30,381,251. If Cook is not interested in having its massive long term liabilities reduced then what is their motivation? It can only be Western Wireless' desire to potentially pick up the defaulted licenses through Cook's bidding.

AirGate Position Against Restructure

AirGate argues against restructure from the standpoint of a C block bidder that dropped out of the auction due to increased bidding competition and participated in the D, E and F block auction, picking up markets at a fraction of the C block price. Additionally, AirGate proclaims that by allowing C block licensees to restructure its debt harms them and companies like them. AirGate, like Cook, also argues that the C block bidders should have been informed of the risks and must accept the consequences.

In reality, AirGate's harm in C block restructure is simply the increased chance of competition from a C block licensee along with foregone opportunity to pick up any default licenses. Any concerns regarding risks that should have been better assessed or license valuations that should have been better analyzed are conjecture and unrelated to AirGate. AirGate dropped out of the C block auction and succeeded in obtaining cheaper prices in the D, E and F block auction. Through the aid of Bell South, they should be successful in launching service in the near future and how C block restructure harms their chances is not clear other than the possible avoidance of an additional competitor or the chance of picking up additional licenses thereby increasing their footprint. If the Commission needs to create a patriarchal position in

the Wireless Bureau to assess punishment and rewards on the industry, AirGate should be the first one to call.

Financial Panel Position For Restructure

Every member of the second panel echoed the extreme need to restructure C block debt. The main points expressed were the price of the C block spectrum in comparison with other PCS broadband license values. According to one panelist, the C block was over-priced while the D, E & F block licenses were underpriced and that a reasonable valuation for PCS broadband spectrum would be the average A and B block prices. Lehman Brothers suggested that once the fair-market value had been established, the government should take an equity position for anything priced above that benchmark. Toronto Dominion stated that the C block financing dilemma was comparable to borrowing \$400,000 to purchase a \$100,000 home, leaving a negative equity position for the average C block licensee. Toronto further stated that even though an enormous amount of capital has found its way to the A and B block PCS licensees, more capital was available yet the current regulations stymie the prospects of such capital infusion. Aside from purchase price, first lien on the license and cross-default provisions make financing difficult to achieve.

One common theme ran through every panelist's views: the Commission should restructure the license debt, change equity structure limits and remove the first lien, standing behind banks and vendors on the secured debt. Once more, Toronto Dominion stated that waiting thirty days to act would be disastrous to C block licensees. Every panelist echoed the same warning of waiting too long to implement the restructure modifications. Time to market was already a serious issue and any further regulatory delay would result in C block licenses chances for funding to diminish.

OnQue Proposal

License Debt Current Balance

In OnQue's initial comments, the recommendation to eliminate the debt balances associated with the licenses was offered as a viable solution. The purpose for removing the entire debt balance is to attract the capital markets based upon the individual licensee instead of judging all licensees in the C block as a high risk investment. Once the debt was removed, the first lien, interest payments and amortization issues became moot and the remainder of each licensee's capital requirements and financial projections will be based upon the operations of each individual licensee. Only when the investment community can analyze each investment based on its business plan, management and market projections, can the dam break for C block funding potential.

The entrenched cellular providers did not pay for the license from which they operate and the local telephone company did not pay for the certificate of convenience and

necessity. The A and B block PCS providers are, for the most part, A and B block cellular providers with a larger footprint, leaving C block licensees and any future auctioned license holder in a precarious competitive position.

In Chairman Reed Hundt's speech to Citizens For A Sound Economy June 18, 1997, he made the following remarks regarding the Commission's spectrum policy:

"...But the new paradigm should allow new entrants to succeed or fail based on their business plans and their ability to attract customers, not because of the weight of their debt burden. This means we should offer to restructure the debt of licensees who still owe the government money for their licenses — because that's what any commercial lender would do — but our offer should be no less than the current dollar value of the licenses. If the licensees in financial trouble can't pay this amount we should foreclose. Further, Congress should give us authority to reclaim and re-auction the licenses that are held by licensees in bankruptcy. We don't guarantee success — only the opportunity to compete; if licensees in financial trouble can't accept our market-based terms, we should let them transfer the licenses, or take them back, and re-auction them promptly."

Chairman Hundt's comments regarding restructure reflect OnQue's exact reasons stated in its June 17 filing: companies should be funded or rejected based on its individual merits and value. Chairman Hundt goes further to say that the restructuring be limited to the current dollar value of the licenses. This, according to several panelists from the financial community, is based on A and B block license prices with reductions due to competitive disadvantages and time to market issues. One member of the second panel suggested approximately \$10 per pop while another suggested \$8 per pop. John Bensch, from Lehman Brothers, stated that if C block license values reflect A and B block values, then the A and B block values decrease making the C block market value also decrease. He went on to say that this iterative process would continue making removal of C block debt a possible action, even though it would not be a welcome option of the Commission.

In calculating market value of these licenses, other considerations should be made other than comparable bid prices in the A and B block auction:

1. Time to market
2. Undercapitalized status of Small Businesses
3. Available capital
4. Risks involved with C block success in competitive environment

Many major U.S. cities have both cellular and PCS wireless providers. So much time has passed since the first legal hurdles involving C block auction delays that many markets have already experienced some market saturation of PCS subscribers from not only the A and B block auction winners, but also some cellular digital network upgrades.

In some cities, as many as three or four digital wireless service providers are competing for market share while the C block license is on indefinite hold.

The 103rd Congress and the Commission have already established the fact that small businesses have less access to capital. Since most of the C block companies did not exist prior to the auction, many have absolutely no capital excluding the license. Since nearly all C block licensees have paid money for bidding services, engineering, legal fees, floor space, salaries and benefits, etc, they have decreased net worth associated with the initial ten percent down-payment to a negative figure due to normal operating expenses. Trying to raise equity capital and maintain minimum equity levels becomes impossible to a firm with a negative net worth and no sign of relief.

Even though many members of the second panel echoed the opinion that there still is available capital for the C block market, the amount of capital, subsequent to the A and B block offerings, has diminished a great deal. Keeping this in mind, the less capital available, the more scrutiny made between competing investments and the more attractive C block licensees must be to gain access to adequate capital.

Continuing the same thought, the C block licensees already have a major factor against them in terms of attracting capital: risk. Small upstart businesses in a multi-million dollar market with entrenched competitors make an investment in these companies difficult to prove worthy. Without any license debt, a C block business plan and management team needs to be extraordinarily thorough and convincing in order succeed in raising the necessary funds to operate. With the license debt, it makes it nearly impossible to accomplish.

In summary, OnQue's position is that the debt balance on the licenses should be eliminated in order to attract capital. The down payment of these licenses, totaling approximately \$1,100,000,000 should be the price paid in full. Consideration was suggested that the Commission take an equity position on everything above the established market value of the licenses. The alternative would be for the Commission to write off the forgiven debt leaving the licensees to deal with income taxes, if any are incurred. OnQue takes the position that the licensee will write off the forgiven debt and consider any tax consequences rather than issue a pro-rata share of the firm for the government's ownership.

Near term cash flow problems will cause these licensees to default on the next interest payment due to the lack of successful fund raising. The fund raising has not been successful due to the debt burdens associated with the licensees. In many of the filed comments, suggestions to defer payments for five years resolves the near term cash flow issue but does not resolve the long term issue of capital procurement. If the debt is not completely eliminated, it should be drastically reduced, as well as deferred for at least five years, before amortization of the remaining balance due begins.

License Debt Amortization - Interest

If the Commission restructures the debt without eliminating it, the interest rates charged should be in parity across all licensees. The U. S. Treasury's cost of money in the August 1996 securities issuance was 6.5% regardless of the coupon rate. Charging licensees that were awarded BTA's last September 7% while charging the others 6.5% is extremely inequitable. The Treasury set the coupon rate based upon the estimated demand price attractive to the sale of such securities. Since the market system increased the face value of the securities, the yield fell 500 basis points below the issued coupon rate. By charging the coupon rate to the September issued licenses, the government is receiving 500 basis points over its cost of money while receiving its cost of money on the remaining C block licensees. Such interest rate differentiations between licensees are not equitable. Every C block licensee should be charged the same interest rate, regardless of when the license was issued and since the government's cost of money is 6.5%, this is what should be incorporated in the debt terms for every licensee.

License Debt Amortization - Principle

If the Commission restructures debt without eliminating it, the heavily reduced debt principle should be amortized over at least 20 years with allowable payments toward principle, without penalty, allowed at any time throughout the term of the note. By amortizing the debt over a longer period of time, the licensee's payments will be reduced allowing the companies to cash flow sooner and increase the probability of paying off the remainder of the debt when funds are available to do so. If a licensee is successful enough to pay the entire balance early, the Commission should calculate the amount of such balance by taking the net present value of the debt amortization term utilizing 6.5% for the cost of money.

Prior Interest Rate Payments

The Commission should return the March 31 interest payments to the licensees, immediately. In addition, if any restructure is implemented, the December 31 payments should also be refunded. Cash is precious to all C block licensees and any funds paid based on the prior debt terms should be refunded without delay. In most cases, funding has not taken place and any interest payments made were paid-in-capital, cash calls or other arrangements in order to keep the licenses. Since these companies are undercapitalized, the Commission should not delay in returning all payments previously made based on the initial debt installment terms. Along with the debt restructure, returning the cash will help the licensees existence and continue fund raising efforts with amended business plans reflecting the restructure and the cash to pay expenses of retaining or renewing the services of investment bankers, underwriters, merchant banks, etc.

Lien On License

If a C block licensee goes out of business, the banks usually have an exercisable clause in the loan documents to foreclose and possess asset or assets in value to compensate for the loan default. As the existing rules express, the banks or lending institutions would not be able to repossess the license(s) leaving only the network hardware, software and any miscellaneous fixed assets within its legal grasp. As many banks and lending institutions have expressed, repossession of a wireless network without the license to operate make the network, from a foreclosure perspective, worthless compared to the original note. Banks and lending institutions have also stated that they do not wish to get into the wireless business yet with the scenario of foreclosure, license possession along with network infrastructure creates more value for debt security.

The Commission should modify its rules, with any debt restructure, and stand behind the lenders, banks and/or vendors that are taking the risks by lending the money. If foreclosure occurs, it gives these parties the ability to possess a working network that can continue collecting revenue and operate the system until it can cover any losses incurred from such default.

Equity Structure

Currently, the Commission has rules that give the licensee options of diluting equity ownership down to 51% or 25% but, in either case, maintain majority voting privileges. In most cases, the capital structure is so high that the 51% option is unattainable leaving only the 25% option. In such cases, any passive investor must not have more than 25% equity and 15% of voting privileges. This would mean that the C block licensee must raise money from at least three different passive investors. When investors analyze the value of any given equity investment, the major considerations in determining percent ownership depend upon a comparison of a projected fair market value versus the initial cash outlay. The ownership percentage increases until the respective portion of the projected fair market value exceeds the initial investment by an amount that makes investments in alternative prospects less favorable. For example, a licensee requires \$10,000,000 in equity from a specific investor. The investor anticipates an exit date of the fifth year of operation. The investor takes the financial pro forma or forecast and takes an average market multiple of net operations, adds in accumulated cash and subtracts remaining debt to arrive at an estimate of fair market value of the company, in the fifth year. In this case, it equals \$100,000,000 and the investor must then calculate what percentage of the \$100,000,000 makes the \$10,000,000 investment feasible. Under the existing rules, the investor can take no more than 25% making the maximum fair market value \$25,000,000 for the investor, a multiple of 2.5. If alternative existing equity securities are performing at multiples of 4 or 5, this investment will not be made for the C block licensee. In this example, the investor would normally negotiate 40-50% ownership to attain attractive investment multiples.

The Commission should modify its existing equity structure rules to eliminate the 25% equity limit and allow the licensee to negotiate with the investor for the appropriate ownership percentage with the understanding that voting control continues to remain with the licensee. As long as the licensee has voting control, the equity percentage of any outside investor should not be a detrimental factor in achieving Commission policies of avoiding "unjust enrichment".

Penalties For Forfeiture

Under the Commissions rules in Title 47 Section 1.2104(g)(1) through (g)(2), penalties are assessed on licensees who default on interest payments. These penalties are calculated by taking the difference of the existing bid price and the new bid price and adding three percent of this difference to the first penalty amount calculated. If the new bid exceeds the original bid, the first penalty will not be levied but three percent of the original bid will be assessed for administrative compensation for the license re-issue process.

These penalties are excessive and will automatically result in corporate dissolution with the Commission collecting a fraction of the penalties and other receivables from the bankruptcy trustee, once the estate distribution has been settled in the Federal Bankruptcy Court. In order to avoid these catastrophes, the Commission should eliminate the penalty provisions in the existing rules.

Conclusion

It is paramount that the Commission restructure its rules and regulations allowing the C block licensees to pass or fail capital market valuations based on the merit of each licensee and market instead of the binding rules governing every C block licensee. If the Commission does not restructure the debt, licensees will default as a result of finding no financing. The licenses will be re-auctioned at a fraction of the original winning bids causing the companies to enter corporate dissolution resulting from the Commission's penalty rules. There will be no winners other than the large A and B block licensee in the quest for a inexpensive nation-wide footprint.

C block debt balances should be removed and the cost of each respective license should be equivalent to the down-payment. This will permit the C block licensees to acquire debt and equity financing without a government first lien on the license and higher fair market values for equity financing purposes. If the A and B block valuations are taken to adjust the C block to fair market value, the subsequent results will be devalued, making the C block license debt, once again overvalued. This circular calculation will continue through open market forces until the price of the spectrum becomes zero.

If the Commission decides to adjust the debt balances and not eliminate them, the interest rate charged to all licensees should be the same rate. This rate should also

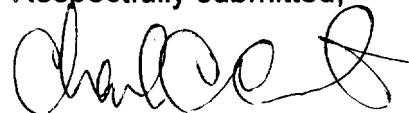
reflect the government's cost of money instead of the Treasury coupon. In addition, any amortization of debt principle should be voluntary with no required principle payments until the sixth year. The term of the notes should extend to at least twenty years. With regards to the financing terms, the government should remove the first lien on the license and stand behind potential lending institutions and vendors for secured debt financing arrangements. The Commission should immediately refund the March 31, 1997 interest payments made by some C block licensees and, once restructure has been decided as a course of action, refund the December 31, 1996 interest payments. Since the stay and subsequent restructure does not reflect the payments made, the Commission should allow the licensees the choice to receive a refund for both interest payments or reduce the principle balance of the license debt.

The Commission needs to retain the spirit of the regulations with regards to the control group having majority voting control, however, the rules regarding equity ownership limits must be eliminated allowing the C block licensees to negotiate these terms, on a case by case basis, with potential equity financing participants. Foreign ownership restrictions should also be lifted to correspond with the World Trade Conference decisions that will become effective January 1, 1998.

Finally, the Commission should eliminate the penalty rules regarding license default. The penalties calculated will, in most cases, be extraordinary causing immediate corporate dissolution. Not only will these penalties not be collected but the companies required to pay them will cease to exist. These situations cannot be in the public interest.

OnQue urges the Commission to restructure the debt, equity limitations and financing terms in such a way that the C block licensees will have the opportunity to raise necessary capital for wireless PCS operations. The current rules have hampered conventional avenues of financing and revert the only existing C block licensees that are financed or operational to succumb to the whims of the large RBOC's or PCS A and B block licensees. Immediate action must be taken for the protection of the C block licensees and the opportunity for the American people to have a real choice to access the information age.

Respectfully submitted,



Charles C. Curtis

President

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